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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al. individually and
on behalf of all others similarly situated,

Case No. 3:20-CV-04688-RS

**DEFENDANT GOOGLE LLC'S MOTION TO
BIFURCATE TRIAL RE: PUNITIVE
DAMAGES**

Plaintiff.

V.

GOOGLE LLC,

Defendant

Date: July 30, 2025
Time: 09:30 A.M.
Court: Courtroom 3, 17th Floor, SF
Judge: Hon. Richard Seeborg

Date Action Filed: July 14, 2025
Trial Date: August 18, 2025

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on July 30, 2025, at 09:30 A.M., before the Honorable
 3 Richard Seeborg of the United States District Court for the Northern District of California in
 4 Courtroom 3 , San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102,
 5 Defendant Google LLC (“Google”) will move the Court to bifurcate trial into two phases such that
 6 discussion of Google’s liability for and the amount of compensatory damages is addressed in the
 7 first phase, and any potential discussion of liability for and the amount of punitive damages is heard
 8 at the second stage of trial.

9 This Motion is based on this Notice of Motion, accompanying Memorandum of Points and
 10 Authorities, and all other evidence in the record.

11 **ISSUE PRESENTED**

12 Whether trial should be bifurcated pursuant to Federal Rule of Civil Procedure 42(b).

14 Dated: June 24, 2025

COOLEY LLP

16 By: /s/ Eduardo E. Santacana

17 Benedict Y. Hur
 18 Simona Agnolucci
 19 Eduardo Santacana
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 21 Harris Mateen
 22 Isabella McKinley Corbo

21 Attorneys for Defendant
 22 Google LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

To avoid prejudice to Google and to promote judicial economy, Google respectfully requests that this Court grant its motion to bifurcate damages into two phases such that discussion of Google’s liability for and the amount of compensatory damages is addressed in the first phase, and any potential discussion of liability for and the amount of punitive damages is heard at the second stage of trial.¹ Meaning, that evidence regarding Google’s potential liability for punitive damages should be presented in the second phase of trial along with any evidence related to the amount of punitive damages Google may be liable for only if the jury first finds Google liable in the first phase of trial. This bifurcation would avoid undue prejudice to Google, reduce the risk of jury confusion, and aid in accomplishing an expeditious and economic trial.

II. ARGUMENT

13 “For convenience, to avoid prejudice, or to expedite and economize, the court may order a
14 separate trial of one or more separate issues” Fed. R. Civ. P. 42(b). “The determination of
15 whether to bifurcate a trial is a matter within the Court’s discretion. Factors to be considered when
16 determining whether to bifurcate a trial include: avoiding prejudice, separability of the issues,
17 convenience, judicial economy, and reducing risk of confusion. Defendants, as the moving parties,
18 bear the burden of demonstrating that bifurcation is warranted.” *Vieste, LLC v. Hill Redwood Dev.*,
19 No. C 09-04024 JSW, 2011 WL 13153235, at *1 (N.D. Cal. Nov. 30, 2011) (citations omitted)
20 (granting motion to bifurcate the issue of punitive damages from liability and compensatory
21 damages). Google can meet its burden.

22 **Bifurcation would reduce the risk of jury confusion.** The evidence required to prove
23 alleged liability in this case is independent from the evidence relevant to proving damages.
24 Liability issues will primarily relate to issues concerning Google’s disclosures, users’ expectations
25 after reading those disclosures, as well as the technical underpinnings of how (s)WAA-off data

¹ Google has filed a Motion in Limine to preclude Plaintiffs from introducing any evidence and argument regarding disgorgement before the jury, but were the Court to deny that Motion, Google would request that unjust enrichment be assessed in the second phase of trial along with punitive damages.

1 collection and processing works. Damages issues will relate primarily to whether and to what
 2 extent the Screenwise ipsos panel payments are comparable to this case. None of this overlaps with
 3 the evidence required to prove liability for the amount of punitive damages.

4 Because there is no substantial overlap between the evidence required to prove liability and
 5 damages there are no efficiencies gained by trying both the liability and punitive damages phases
 6 together. Furthermore, to introduce evidence of Google's finances when the jury should be
 7 considering issues of liability could confuse the jury as to what evidence they should be weighing
 8 for their liability determinations. “[B]ifurcation will not only improve efficiencies in the litigation
 9 process, but it will also help prevent juror confusion at trial by allowing the jury to decide issues
 10 that are as narrowly tailored as possible.” *Gable v. Land Rover N. Am., Inc.*, No. SACV 07-0376
 11 AG (RNBx), 2011 WL 3563097, at *7 (C.D. Cal. July 25, 2011) (granting motion to bifurcate trial
 12 into a liability phase and a damages phase); *see also Barker v. Yassine*, No. 2:11-CV-00246-AC,
 13 2016 WL 4264149, at *3 (E.D. Cal. Aug. 15, 2016) (“[B]ifurcation would avoid potential confusion
 14 of the jurors and prejudice to defendant that might result from the presentation of evidence about
 15 defendant’s personal finances and net worth while the jury is determining defendant’s liability and
 16 plaintiff’s non-punitive damages.”).

17 **Bifurcation would avoid prejudice to Google and Plaintiffs would not be prejudiced if
 18 the action is bifurcated.** Exposing the jury to Google’s revenue figures when they are deliberating
 19 over liability issues might bias the jury against Google. For example, “references to [Google’s]
 20 size, public company status, market capitalization, corporate transactions, or revenue, or to the
 21 parties’ respective financing of litigation or ability to pay any damage award . . . would constitute
 22 an improper attempt to garner juror sympathy based on a ‘David v. Goliath’ argument unrelated to
 23 the merits of the action.” *Nanometrics, Inc. v. Optical Sols., Inc.*, No. 18-CV-00417-BLF, 2023
 24 WL 7169549, at *3 (N.D. Cal. Oct. 30, 2023) (granting motion to exclude evidence of the parties’
 25 size disparity). Plaintiffs have indicated that they plan to introduce Google’s parent company,
 26 Alphabet, Inc.’s 2024 10-K into evidence, presumably to support their damages arguments. Google
 27 has submitted its objections to the introduction of that evidence, which is overbroad because it is
 28 not limited to U.S. revenue or revenue figures from the products at issue and would mislead the

1 jury as to the amount of Google's profits, if any, that should be disgorged. However, to the extent
 2 this Court permits the jury to see this evidence it should be done in the context of damages, not
 3 liability, to avoid prejudice to Google. With the exception of Alphabet, Inc.'s 2024 10-K, Google
 4 does not intend to object to Plaintiffs' admission of relevant evidence of Google's financial
 5 condition, which Plaintiffs would be allowed to use in the second phase of trial. Plaintiffs have put
 6 forth no argument as to how this delay would prejudice them. That is because there is none.

7 Furthermore, a jury instruction would not cure the potential prejudice to Google. “[W]hile
 8 there is a ‘strong presumption that jurors follow instructions,’ a limiting instruction may not
 9 sufficiently mitigate the prejudicial impact of evidence in all cases.” *In re Est. of Diaz v. City of*
 10 *Anaheim*, 840 F.3d 592, 606 (9th Cir. 2016) (finding that district court abused its discretion in
 11 failing to bifurcate liability issues from compensatory damages issues where “the jury heard
 12 considerable and inflammatory evidence that had nothing to do” with the issues at hand); *see also*
 13 *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994) (“Jury instructions typically leave the jury
 14 with wide discretion in choosing amounts, and the presentation of evidence of a defendant’s net
 15 worth creates the potential that juries will use their verdicts to express biases against big
 16 businesses.”).

17 **Bifurcation would promote judicial economy because it would permit the Court to**
 18 **defer potentially unnecessary proceedings pending resolution of threshold issues.**
 19 Specifically, if the jury does not find liability, the Court would not need to entertain argument and
 20 consider evidence as to unjust enrichment or punitive damages. *See, e.g., Nash-Perry v. City of*
 21 *Bakersfield*, No. 1:18-cv-1512 JLT BAK (SAB), 2022 WL 3357516, at *2 (E.D. Cal. Aug. 15,
 22 2022) (“Bifurcation would expedite and economize trial by precluding the presentation of the
 23 financial status of the defendants unless and until it is necessary.”).

24 **III. CONCLUSION**

25 For the foregoing reasons, the Court should bifurcate trial such that damages are split into
 26 two phases: The first phase would include discussion of Google's liability for and the amount of
 27 compensatory damages. The second phase would include any potential discussion of liability for
 28 and the amount of punitive damages.

1 Dated: June 24, 2025

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3 By: /s/ Eduardo E. Santacana

4 Benedict Y. Hur
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11 Attorneys for Defendant
12 Google LLC
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12 UNITED STATES DISTRICT COURT
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Plaintiff,

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**[PROPOSED] ORDER GRANTING
DEFENDANT GOOGLE LLC'S MOTION TO
BIFURCATE TRIAL RE: PUNITIVE
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[PROPOSED] ORDER

Before the Court is Defendant Google LLC’s (“Google”) Motion to Bifurcate Trial Re: Punitive damages to bifurcate trial into two phases such that discussion of Google’s liability for and the amount of compensatory damages is addressed in the first phase, and any potential discussion of liability for and the amount of punitive damages is heard at the second stage of trial.

Having considered the Notice of Motion and the incorporated Memorandum of Points and Authorities, along with other materials in the record, argument of counsel, and such other matters as the Court may consider, the Court GRANTS Google’s Motion.

Accordingly, IT IS HEREBY ORDERED THAT:

Trial be bifurcated such that damages are split into two phases: The first phase would include discussion of Google’s liability for and the amount of compensatory damages. The second phase would include any potential discussion of liability for and the amount of punitive damages.

IT IS SO ORDERED.

DATED: _____

Honorable Richard Seeborg
United States District Judge